

1 **WO**

2  
3  
4  
5  
6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Excel Fortress Limited, et al.,

10 Plaintiffs,

11 v.

12 Vaughn La Verl Wilhelm, et al.,

13 Defendants.  
14

No. CV-17-04297-PHX-DWL

**ORDER**

15 The operative complaint in this case (Doc. 62) asserts the following seven counts:  
16 (1) violations of the Texas Uniform Trade Secrets Act, (2) violations of the Federal Defend  
17 Trade Secrets Act, (3) business disparagement, (4) tortious interference, (5) breach of  
18 contract, (6) negligence, and (7) conversion. In counts 1 and 2, five individuals and entities  
19 are named as defendants: Vaughn La Verl Wilhelm, Ryan McHugh, Eversource Capital  
20 LP, Eversource Group, LP, and Eversource Global Technology LLC. (*Id.* at 15-16.) Count  
21 3, 6, and 7 are asserted only against Wilhelm. (*Id.* at 17, 19-20.) Count 4 seems to be  
22 asserted against all five defendants. (*Id.* at 18.) Count 5 is asserted only against Wilhelm  
23 and McHugh. (*Id.* at 18-19.)

24 Now pending before the Court is Plaintiffs' motion, under Federal Rule of Civil  
25 Procedure 41(a)(2), to dismiss most of these counts and defendants without prejudice.  
26 (Doc. 123.) Specifically, Plaintiffs move to dismiss all counts without prejudice as to four  
27 of the defendants (McHugh and the three Eversource entities) and move to dismiss Counts  
28 1 and 2 without prejudice as to defendant Wilhelm. (*Id.*) Plaintiffs further state they will

1 “agree to condition the dismissal without prejudice upon the trade secret claims (Counts I  
2 and II) being refiled in this Court and before the Honorable Dominic W. Lanza.” (Doc.  
3 123 at 4.)

4 In their response, Defendants don’t oppose the relief sought by Plaintiffs but believe  
5 the dismissal should be conditioned on a requirement that all of the dismissed counts—not  
6 just the trade secret claims in Counts 1 and 2—must be re-filed in this Court. (Doc. 127 at  
7 1-2.)<sup>1</sup>

8 The Court agrees with Defendants. Plaintiffs haven’t attempted to explain why the  
9 condition they concede should be applied to their dismissal of Counts 1 and 2 shouldn’t  
10 also apply to their dismissal of the remaining counts.

11 Because Plaintiffs didn’t agree to this condition in their motion, the Court cannot  
12 simply grant their motion. Instead, the court must “grant[ ] to the plaintiff the option to  
13 refuse the voluntary dismissal if the conditions imposed are too onerous.” *Lau v. Glendora*  
14 *Unified Sch. Dist.*, 792 F.2d 929, 930 (9th Cir. 1986). To accomplish this, the court must  
15 “provide [Plaintiffs] a reasonable period of time within which to refuse the conditional  
16 voluntary dismissal by withdrawing [their] motion for dismissal or to accept the dismissal  
17 despite the imposition of conditions.” *Id.* at 931.

18 Accordingly, **IT IS ORDERED** that Plaintiffs have 7 days, from today’s date, to  
19 consider whether to accept the proposed dismissal on the terms outlined above or to  
20 withdraw their motion to dismiss. Plaintiffs must, before the expiration of this period,  
21 inform the Court of their decision by filing a notice through the CM/ECF system. A failure  
22 to respond within this period will be deemed an acceptance of the Court’s proposed terms.

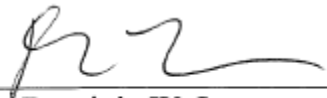
23 If Plaintiffs accept these terms (or fail to respond), the Court will issue a separate  
24 order granting the motion to dismiss (Doc. 123) on the following terms: (1) all claims  
25 against defendants McHugh, Eversource Capital LP, Eversource Group, LP, and  
26 Eversource Global Technology LLC will be dismissed without prejudice, with the  
27 condition that, if Plaintiffs seek to reassert any of those claims in the future, such claims

---

28 <sup>1</sup> After Defendants’ response was filed, Plaintiffs informed the Court that they would  
not be submitting a reply.

1 must be refiled in this Court before the undersigned judge; and (2) Claims 1 and 2 against  
2 defendant Wilhelm will be dismissed without prejudice, with the condition that, if Plaintiffs  
3 seek to reassert any of those claims in the future, such claims must be refiled in this Court  
4 before the undersigned judge.

5 Dated this 24th day of January, 2019.

6  
7  
8   
9 \_\_\_\_\_  
10 Dominic W. Lanza  
11 United States District Judge  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28